

to, and reviewed by, senior management of the derivatives clearing organization. Protocols of tests which result in few or no exceptions shall be subject to more searching review.

(k) *Coordination of business continuity and disaster recovery plans.* A derivatives clearing organization shall, to the extent practicable:

(1) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement following a disruption;

(2) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan and the plans of its clearing members; and

(3) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

§ 39.19 Reporting.

(a) *General.* Each derivatives clearing organization shall provide to the Commission the information specified in this section and any other information that the Commission deems necessary to conduct its oversight of a derivatives clearing organization.

(b) *Submission of reports.* (1) Unless otherwise specified by the Commission or its designee, each derivatives clearing organization shall submit the information required by this section to the Commission electronically and in a format and manner specified by the Commission.

(2) *Time zones.* Unless otherwise specified by the Commission or its designee, any stated time in this section is Central time for information concerning derivatives clearing organizations located in that time zone, and Eastern time for information concerning all other derivatives clearing organizations.

(3) Unless otherwise specified by the Commission or its designee, *business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, and Federal holidays.

(c) *Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph the information specified below:

(1) *Daily reporting.* (i) A report containing the information specified by this paragraph (c)(1), which shall be compiled as of the end of each trading day and shall be submitted to the Commission by 10 a.m. on the following business day:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin; and

(D) End-of-day positions for each clearing member, by house origin and by each customer origin.

(ii) The report shall contain the information required by paragraph (c)(1)(i) of this section for:

(A) All futures positions, and options positions, as applicable;

(B) All swaps positions; and

(C) All securities positions that are held in a customer account subject to section 4d of the Act or are subject to a cross-margining agreement.

(2) *Quarterly reporting.* A report of the derivatives clearing organization's financial resources as required by § 39.11(f) of this part; provided that, additional reports may be required by paragraph (c)(4)(i) of this section or § 39.11(f) of this part.

(3) *Annual reporting—(i) Annual report of chief compliance officer.* The annual report of the chief compliance officer required by § 39.10 of this part.

(ii) *Audited financial statements.* Audited year-end financial statements of the derivatives clearing organization or, if there are no financial statements available for the derivatives clearing organization itself, the consolidated

audited year-end financial statements of the derivatives clearing organization's parent company.

(iii) [Reserved]

(iv) *Time of report.* The reports required by this paragraph (c)(3) shall be submitted concurrently to the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year; provided that, a derivatives clearing organization may request from the Commission an extension of time to submit a report, provided the derivatives clearing organization's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(4) *Event-specific reporting*—(i) *Decrease in financial resources.* If there is a decrease of 25 percent in the total value of the financial resources available to satisfy the requirements under § 39.11(a)(1) of this part, either from the last quarterly report submitted under § 39.11(f) of this part or from the value as of the close of the previous business day, the derivatives clearing organization shall report such decrease to the Commission no later than one business day following the day the 25 percent threshold was reached. The report shall include:

(A) The total value of the financial resources;

(1) As of the close of business the day the 25 percent threshold was reached, and

(2) If reporting a decrease in value from the previous business day, the total value of the financial resources immediately prior to the 25 percent decline;

(B) A breakdown of the value of each financial resource reported in each of paragraphs (c)(4)(i)(A)(1) and (2) of this section, calculated in accordance with the requirements of § 39.11(d) of this part, including the value of each individual clearing member's guaranty fund deposit if the derivatives clearing organization reports guaranty fund deposits as a financial resource; and

(C) A detailed explanation for the decrease.

(ii) *Decrease in ownership equity.* No later than two business days prior to

an event which the derivatives clearing organization knows or reasonably should know will cause a decrease of 20 percent or more in ownership equity from the last reported ownership equity balance as reported on a quarterly or audited financial statement required to be submitted by paragraph (c)(2) or (c)(3)(ii), respectively, of this section; but in any event no later than two business days after such decrease in ownership equity for events that caused the decrease about which the derivatives clearing organization did not know and reasonably could not have known prior to the event. The report shall include:

(A) Pro forma financial statements reflecting the derivatives clearing organization's estimated future financial condition following the anticipated decrease for reports submitted prior to the anticipated decrease and current financial statements for reports submitted after such a decrease; and

(B) Details describing the reason for the anticipated decrease or decrease in the balance.

(iii) *Six-month liquid asset requirement.* Immediate notice when a derivatives clearing organization knows or reasonably should know of a deficit in the six-month liquid asset requirement of § 39.11(e)(2).

(iv) *Change in current assets.* No later than two business days after current liabilities exceed current assets; the notice shall include a balance sheet that reflects the derivatives clearing organization's current assets and current liabilities and an explanation as to the reason for the negative balance.

(v) *Request to clearing member to reduce its positions.* Immediate notice, of a derivatives clearing organization's request to a clearing member to reduce its positions because the derivatives clearing organization has determined that the clearing member has exceeded its exposure limit, has failed to meet an initial or variation margin call, or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The number of positions by which the derivatives clearing organization requested the reduction;

(D) All products that are the subject of the request; and

(E) The reason for the request.

(vi) *Determination to transfer or liquidate positions.* Immediate notice, of a determination that any position a derivatives clearing organization carries for one of its clearing members must be liquidated immediately or transferred immediately, or that the trading of any account of a clearing member shall be only for the purpose of liquidation because that clearing member has failed to meet an initial or variation margin call or has failed to fulfill any other financial obligation to the derivatives clearing organization. The notice shall include:

(A) The name of the clearing member;

(B) The time the clearing member was contacted;

(C) The products that are subject to the determination;

(D) The number of positions that are subject to the determination; and

(E) The reason for the determination.

(vii) *Default of a clearing member.* Immediate notice, upon the default of a clearing member. An event of default shall be determined in accordance with the rules of the derivatives clearing organization. The notice of default shall include:

(A) The name of the clearing member;

(B) The products the clearing member defaulted upon;

(C) The number of positions the clearing member defaulted upon; and

(D) The amount of the financial obligation.

(viii) *Change in ownership or corporate or organizational structure—(A) Reporting requirement.* Any anticipated change in the ownership or corporate or organizational structure of the derivatives clearing organization or its parent(s) that would:

(1) Result in at least a 10 percent change of ownership of the derivatives clearing organization,

(2) Create a new subsidiary or eliminate a current subsidiary of the derivatives clearing organization, or

(3) Result in the transfer of all or substantially all of the assets of the derivatives clearing organization, including its registration as a derivatives clearing organization to another legal entity.

(B) *Required information.* The report shall include: a chart outlining the new ownership or corporate or organizational structure; a brief description of the purpose and impact of the change; and any relevant agreements effecting the change and corporate documents such as articles of incorporation and bylaws. With respect to a corporate change for which a derivatives clearing organization submits a request for approval to transfer its derivatives clearing organization registration and open interest under § 39.3(f) of this part, the informational requirements of this paragraph (c)(4)(viii)(B) shall be satisfied by the derivatives clearing organization's compliance with § 39.3(f)(3).

(C) *Time of report.* The report shall be submitted to the Commission no later than three months prior to the anticipated change; provided that the derivatives clearing organization may report the anticipated change to the Commission later than three months prior to the anticipated change if the derivatives clearing organization does not know and reasonably could not have known of the anticipated change three months prior to the anticipated change. In such event, the derivatives clearing organization shall immediately report such change to the Commission as soon as it knows of such change.

(D) *Confirmation of change report.* The derivatives clearing organization shall report to the Commission the consummation of the change no later than two business days following the effective date of the change.

(ix) *Change in key personnel.* No later than two business days following the departure, or addition of persons who are key personnel as defined in § 39.1(b), a report that includes, as applicable, the name of the person who will assume the duties of the position on a temporary basis until a permanent replacement fills the position.

(x) *Change in credit facility funding arrangement.* No later than one business

day after a derivatives clearing organization changes an existing credit facility funding arrangement it may have in place, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xi) *Sanctions.* Notice of action taken, no later than two business days after the derivatives clearing organization imposes sanctions against a clearing member.

(xii) *Financial condition and events.* Immediate notice after the derivatives clearing organization knows or reasonably should have known of:

(A) The institution of any legal proceedings which may have a material adverse financial impact on the derivatives clearing organization;

(B) Any event, circumstance or situation that materially impedes the derivatives clearing organization's ability to comply with this part and is not otherwise required to be reported under this section; or

(C) A material adverse change in the financial condition of any clearing member that is not otherwise required to be reported under this section.

(xiii) *Financial statements material inadequacies.* If a derivatives clearing organization discovers or is notified by an independent public accountant of the existence of any material inadequacy in a financial statement, such derivatives clearing organization shall give notice of such material inadequacy within 24 hours, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

(xiv)–(xv) [Reserved]

(xvi) *System safeguards.* A report of:

(A) Exceptional events as required by § 39.18(g) of this part; or

(B) Planned changes as required by § 39.18(h) of this part.

(5) *Requested reporting.* (i) Upon request by the Commission, a derivatives clearing organization shall file with the Commission such information related to its business as a clearing organization, including information relating to trade and clearing details, in the format and manner specified, and with-

in the time provided, by the Commission in the request.

(ii) Upon request by the Commission, a derivatives clearing organization shall file with the Commission a written demonstration, containing such supporting data, information and documents, that the derivatives clearing organization is in compliance with one or more core principles and relevant provisions of this part, in the format and manner specified, and within the time provided, by the Commission in the request.

(iii) Upon request by the Commission, a derivatives clearing organization shall file with the Commission, for each customer origin of each clearing member, the end-of-day gross positions of each beneficial owner, in the format and manner specified, and within the time provided, by the Commission in the request. Nothing in this paragraph shall affect the obligation of a derivatives clearing organization to comply with the daily reporting requirements of paragraph (c)(1) of this section.

§ 39.20 Recordkeeping.

(a) *Requirement to maintain information.* Each derivatives clearing organization shall maintain records of all activities related to its business as a derivatives clearing organization. Such records shall include, but are not limited to, records of:

(1) All cleared transactions, including swaps;

(2) All information necessary to record allocation of bunched orders for cleared swaps;

(3) All information required to be created, generated, or reported under this part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations in connection with setting and evaluating margin levels, determining the value and adequacy of financial resources, and establishing settlement prices;

(4) All rules and procedures required to be submitted pursuant to this part 39 and part 40 of this chapter, including all proposed changes in rules, procedures or operations subject to § 40.10 of this chapter; and

(5) Any data or documentation required by the Commission or by the derivatives clearing organization to be